

Johanna Hutchins, 0069759
Attorney for Plaintiff Winter Enterprises, LLC, dba Fun Factory

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WINTER ENTERPRISES, LLC

dba Fun Factory
1631 Sherman Avenue
Cincinnati, Ohio 45212

Plaintiff,

vs.

WEST BEND MUTUAL INSURANCE CO.
1900 South 18th Avenue
West Bend, Wisconsin 53095

Defendant.

: Case No. 1:17-cv-00360-TSB
: Judge _____

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR BREACH OF
CONTRACT AND INSURANCE
BAD FAITH**

Comes now the Plaintiff, by and through counsel, hereby complains and alleges
against Defendant, WEST BEND MUTUAL INSURANCE COMPANY, a Wisconsin
Corporation, as follows:

GENERAL ALLEGATIONS

1. The Plaintiff is and was at all relevant times hereto, an Ohio Limited
Liability Company, engaged in business in the State of Ohio, Hamilton County, and a
named insured under a policy of insurance issued by the Defendant, West Bend Mutual
Insurance Company. A copy of the policy was previously attached as Exhibit A to
Plaintiff's Complaint filed in State Court.

2. At all times relevant to the within action, Defendant West Bend Mutual Insurance Company was and remains a foreign Corporation, doing business in the State of Ohio, namely providing commercial insurance to Ohio businesses, such as the Plaintiff.

3. At all times relevant to the within action, the Plaintiff was current on the premiums with the Defendant.

4. On August 28, 2016, the Plaintiff's insured business located at 1631 Sherman Avenue, Norwood, Hamilton County, Ohio, 45212, sustained a loss, damaging real property, contents and other business activities.

5. Shortly after the loss, the Plaintiff submitted a claim to the Defendant for the damages sustained.

COUNT I
(Breach of Contract- Warehouse/Garage Area)

6. Plaintiff restates the General Allegations of this Complaint as if fully rewritten herein.

7. There is a valid and existing insurance agreement between the Plaintiff and the Defendant.

8. Plaintiff has complied with all obligations under the policy, including bringing this suit within the applicable statute of limitations, with the Defendant, and is entitled to the coverage afforded it under the West Bend Mutual Insurance Company Policy of Insurance.

9. Defendant has breached the agreement by, *inter alia*, refusing to properly and fully compensate the Plaintiff for its damages.

10. A portion of Plaintiff's business structure sustained significant damage to the rubber membrane roof over top of a warehouse/garage.

11. This rubber membrane was significantly ruptured to the point a large, gaping hole was created.

12. Despite a professional roofing company's written opinion that the entire rubber membrane needed to be replaced, the Defendant elected a partial repair.

13. This partial repair is ineffective, diminishes the value of the building, impacts the integrity of the roof, and constitutes a breach of the terms of the policy.

14. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

COUNT II

(Breach of Contract- Roller Rink/Alley Way Area)

15. Plaintiff restates the General Allegations and Count I Allegations of this Complaint as if fully rewritten herein.

16. There is a valid and existing insurance agreement between the Plaintiff and the Defendant.

17. Plaintiff has complied with all obligations under the policy, including bringing this suit within the applicable statute of limitations, with the Defendant, and is entitled to the coverage afforded it under the West Bend Mutual Insurance Company Policy of Insurance.

18. Defendant has breached the agreement by, *inter alia*, refusing to properly and fully compensate the Plaintiff for its damages.

19. Under the terms of the policy, Causes of Loss- Special Form- Covered causes of loss means risk of direct physical loss unless the loss is excluded or limited by other term provisions.

20. A portion of Plaintiff's business structure, specifically the back wall of the structure of the 'alley way', sustained significant damage to it caused by a large tree and high winds.

21. This wall ultimately failed and allowed water to enter the structure and the water damaged contents and structure, including a special wood floor designed for roller skating.

22. Despite written report by a qualified engineer opining as to the cause of loss, Defendant refuses to provide coverage.

23. This refusal constitutes a breach of the policy.

24. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

COUNT III

(Contractual Breach of the Implied Covenant of Good faith and Fair Dealing)

25. Plaintiff restates the General Allegations and the Allegations contained in Count I and Count II of this Complaint as if fully rewritten herein.

26. There is implied in every contract a covenant of good faith and fair dealing.

27. Defendant and Plaintiff entered into a valid and existing insurance contract.

28. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly and fully compensate Plaintiff.

29. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly provide coverage to the Plaintiff.

30. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly work with the Plaintiff's public adjuster in forwarding a complete and accurate copy of the policy, forcing the parties to move forward without adequate documentation of what coverages were afforded the Plaintiff.

31. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

COUNT IV

(Tortious Breach of the Implied Covenant of Good faith and Fair Dealing)

32. Plaintiff restates the General Allegations and the Allegations contained in Count I, II and III of this Complaint as if fully rewritten herein.

33. There is implied in every contract a covenant of good faith and fair dealing.

34. Defendant and Plaintiff entered into a valid and existing insurance contract.

35. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly and fully compensate Plaintiff.

36. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly provide coverage to the Plaintiff.

37. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly work with the Plaintiff's public adjuster in forwarding a complete and accurate copy of the policy, forcing the parties to move forward without adequate documentation of what coverages were afforded the Plaintiff.

38. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

39. Plaintiff has been required to retain the services of an attorney to commence this action and is entitled to attorney's fees and costs.

COUNT V
(Bad Faith)

40. Plaintiff restates the General Allegations and the Allegations contained in Count I, II, III and IV of this Complaint as if fully rewritten herein.

41. The acts and omissions of the Defendant as complained of herein, and yet to be discovered in this matter, constitute bad faith.

42. Plaintiff sustained damages as a result of Defendant's bad faith.

43. Plaintiff is further entitled to punitive damages as a result of Defendant's bad faith.

44. Plaintiff has been required to retain the services of an attorney to commence this action and is entitled to attorney's fees and costs.

COUNT VI
(Unfair Trade Practices)

45. Plaintiff restate the General Allegations and the Allegations contained in Count I, II, III, IV and V of this Complaint as if fully rewritten herein.

46. Defendant has engaged in unfair trade practices, including Defendant's failure to properly settle Plaintiff's claim and provide coverage for Plaintiff's claim.

47. Plaintiff sustained damages as a result of Defendant's unfair trade practices.

48. Plaintiff is further entitled to punitive damages as a result of Defendant's unfair trade practices.

49. Plaintiff has been required to retain the services of an attorney to commence this action and is entitled to attorney's fees and costs.

WHEREFORE, pursuant to the General Allegations and Counts I, II, III, IV, V and IV of the Complaint, Plaintiff demands judgment against Defendant West Bend Mutual Insurance Company in an amount in excess of \$25,000.00, attorney fees, costs

expended herein, prejudgment and post judgment interest, and whatever other and further relief to which Plaintiff is entitled either in law or in equity.

Respectfully submitted,

s/Johanna Hutchins

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CERTIFICATE OF SERVICE

A copy of the foregoing was mailed this 26th day of May, 2017 via the Court's electronic filing system to all parties of record.

s/Johanna Hutchins

Johanna Hutchins (0069750)
Attorney for Plaintiff